

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE MARCH 24, 2011

**SENATE BILL**

**No. 884**

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**Introduced by Senator Calderon**

February 18, 2011

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An act to add *and repeal* Sections 16587, 16587.5, 16588, and 16589 to of the Government Code, relating to state and local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 884, as amended, Calderon. Tax administration: state and local government: sale of tax liabilities.

Existing law, the Accounts Receivable Management Act, requires participants, under specified conditions, to assign or sell, and authorizes a city, county, or city and county to sell or transfer part or all of its accounts receivable to a private debt collector or private person or entity, provided that the debtor has been notified in writing of the proposed assignment, transfer, or sale, except as specified.

This bill would authorize the State Board of Equalization, ~~the Franchise Tax Board, and any other state agency, department, or office,~~ and any city, county, or city and county, to sell to investors those accounts receivable arising from *specified* tax liabilities under the jurisdiction of the authorized entity, *as provided*. The bill would require the entity to retain an independent firm that has demonstrated expertise in marketing and selling distressed assets that meets specified requirements, and would require the firm to report certain information, as specified. *This bill would authorize the State Board of Equalization to release information that is necessary to facilitate a due diligence review by a prospective purchaser of the tax liability, as specified.*

*This bill would repeal these provisions on January 1, 2014.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 16587 is added to the Government Code,  
2     to read:  
3     16587. (a) Notwithstanding any other law, the State Board of  
4     Equalization, ~~the Franchise Tax Board, and any other state agency,~~  
5     ~~department, or office,~~ *are* is hereby authorized to sell to investors  
6     those tax liabilities under the ~~jurisdictions of the boards, agencies,~~  
7     ~~departments, and offices~~ *jurisdiction of the board* that are subject  
8     to an automatic stay on collection of taxes, pursuant to a bankruptcy  
9     proceeding under Title 11 of the United States Code. In conducting  
10    these sales ~~they are empowered to compromise and settle the~~  
11    ~~amount which they,~~ *the State Board of Equalization is authorized*  
12    *to discount that amount the board will receive through the sale of*  
13    ~~these accounts receivable tax liabilities.~~  
14    (b) *For the purposes of this section:*  
15    (1) *“Business entity” means a corporation, partnership, joint*  
16    *venture, limited liability company, business trust, or any other*  
17    *group or combination acting as a unit.*  
18    (2) *“Secondary tax liability” means a tax liability of a business*  
19    *entity for which another person also is obligated under law to pay.*  
20    ~~(b)~~  
21    (c) In order to manage the sales, and receive the maximum value  
22    for the State of California, ~~the state agencies, departments, boards,~~  
23    ~~and offices~~ *board* shall retain an independent firm that has  
24    demonstrated expertise in marketing and selling distressed assets.  
25    In selecting the firm, ~~they~~ *the board* shall use the same process  
26    utilized by the state pursuant to Section 10344 of the Public  
27    Contract Code.  
28    (d) *This section shall not apply to a tax liability that is a*  
29    *secondary tax liability.*  
30    (e) *Prior to entering into an agreement to sell a tax liability,*  
31    *the Executive Director of the State Board of Equalization shall*  
32    *establish a reserve price for each sale of a tax liability. If the*  
33    *reserve price is not met, the tax liability shall not be sold. Any lien*  
34    *that has been filed by the board shall be released pursuant to the*  
35    *order of the bankruptcy court after the tax liability is paid.*

1     (f) *This section shall be limited to business entities that have*  
2     *an outstanding tax liability, including penalties and interest, of*  
3     *one hundred fifty thousand dollars (\$150,000) or more.*

4     (g) *This section shall become inoperative on January 1, 2014,*  
5     *and as of that date is repealed.*

6     SEC. 2. *Section 16587.5 is added to the Government Code, to*  
7     *read:*

8     16587.5. (a) *Notwithstanding Section 7056 of the Revenue*  
9     *and Taxation Code or any other law regarding confidentiality of*  
10    *the taxpayer information in laws administrated by the State Board*  
11    *of Equalization, in order to facilitate the sale of tax liabilities, as*  
12    *provided in Section 16587, the State Board of Equalization may*  
13    *release information that is necessary to facilitate a due diligence*  
14    *review by a prospective purchaser of the tax liability. This*  
15    *information shall be limited to the information relating to the*  
16    *business entity, tax liability, defenses, offsets, and other claims*  
17    *that may be asserted by the business entity. This information shall*  
18    *not include personal information of an officer, individual partner,*  
19    *or any other managing individual of a business entity.*

20    (b) *For purposes of this section, “business entity” has the same*  
21    *meaning as set forth in paragraph (1) of subdivision (b) of Section*  
22    *16587.*

23    (c) *The purchase contract between the purchaser of the tax*  
24    *liability and the State Board of Equalization shall address how*  
25    *payments from other sources will be treated, and shall specify who*  
26    *is responsible for paying all or part of the refund amount if all or*  
27    *any part of the tax liability is refunded to the business entity.*

28    (d) *The purchaser of a tax liability shall not be entitled to the*  
29    *special collection remedies and processes otherwise available to*  
30    *the State Board of Equalization.*

31    (e) *This section shall become inoperative on January 1, 2014,*  
32    *and as of that date is repealed.*

33    ~~SEC. 2.~~

34    SEC. 3. *Section 16588 is added to the Government Code, to*  
35    *read:*

36    16588. (a) *In order to be eligible to be selected to assist the*  
37    *state to market the accounts receivable referenced in Section 16587,*  
38    *the prospective consultant shall not engage in proprietary trading,*  
39    *in so far as the company does not, and shall not, use its resources*  
40    *to purchase accounts receivable, debt securities, or equity securities.*

1 The selected firm shall also demonstrate that it has a centralized,  
2 transparent marketplace and auction platform for the marketing  
3 and sale of distressed assets, and shall produce regular reports to  
4 maintain a level of transparency into the transactions conducted.  
5 This reporting requirement allows the state to comport with its  
6 obligation to report and track state debt levels and transactions  
7 with third parties. The firm shall report to the state the outcome  
8 and tax basis of each transaction taking place through the  
9 marketplace.

10 *(b) This section shall become inoperative on January 1, 2014,*  
11 *and as of that date is repealed.*

12 ~~SEC. 3.~~

13 *SEC. 4.* Section 16589 is added to the Government Code, to  
14 read:

15 16589. (a) A city, county, or city and county is authorized to  
16 sell to investors those tax liabilities under the jurisdiction of the  
17 city, county, or city and county that are subject to an automatic  
18 stay on collection of taxes, pursuant to a bankruptcy proceeding  
19 under Title 11 of the United States Code. The sales shall be  
20 conducted in the manner and under the same conditions that the  
21 state may sell its liabilities, as described in Sections 16587 and  
22 16588.

23 *(b) This section shall become inoperative on January 1, 2014,*  
24 *and as of that date is repealed.*